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IN THE

Supreme Court of the United States

SEPTEMBER TERM, A.D. 1959

No. 434

CHARLES E. LEGGETT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT OF PETITION.

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UNITED STATES LAW PRINTING CO., CHICAGO 18, ILL., LA keview 5-6581

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CHARLES E. LEGGETT,

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vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUMMARY OF THE MATTER INVOLVED

To the Honorable Chief Justice and Associate Justices of the United States:

The petitioner was convicted in a bench trial of transporting or causing to be transported, a 1957 Cadillac Convertible Automobile from Xenia, Ohio, to Chicago, Illinois. He was tried without a jury and was sentenced to a year and a day.

The events leading up to the trial began in June 29, 1957, in Denver, Colorado, where petitioner rented a car and drove the car in connection with his business to Detroit, Michigan. On December 16, 1957, the car was parked at the Willow Run Airport, Ypsilanti, Michigan, where the petitioner reported the car he rented in Denver, Colorado, stolen to the guard at the Airport who in turn reported it to the Michigan State Police.

The car was purportedly found in Wheeling, Illinois. The evidence does not support the judgment of the Court. There is no evidence in the record to show that petitioner knew that the car which he had reported stolen in Michigan was the same car found in Illinois, or that he had ordered it brought to Illinois by an employee of Anderson Motor Company of Xenia, Ohio.

And there is no proof connecting the petitioner with the theft of either of the automobiles brought into evidence by government witnesses. The petitioner seeks reversal of his conviction.

The Federal Grand Jury, the Prosecutor, the District Court, and the Circuit Court of Appeals have expanded the language of the Statute to fit the alleged crime.

FACTS

The record discloses that petitioner was indicted by the April Grand Jury at Chicago in April of 1958.

The indictment was in three counts:

(1) That on December 26, 1957, he wilfully, unlawfully and feloniously transported and caused to be transported in interstate commerce a motor vehicle knowing it to have been stolen.

(2) Was identical except the date was alleged as January 20, 1958.

(3) Was dismissed at the trial.

Leggett, petitioner, here waived a jury and was tried by the Court. After all the evidence was in the Court found petitioner guilty on the remaining two counts and was given a general sentence of a year and a day. Appeal was taken and on July 23, 1959, the Circuit Court of Appeals sustained the conviction. Petition for rehearing was denied. The mandate was stayed until October 2, 1959.

The opinion of the Circuit Court of Appeals is published herein in full at pages 11-15.

QUESTIONS PRESENTED

Can a conviction be sustained where the record conclusively demonstrates that the evidence does not support the charge that the defendant "transported and caused to be transported" a motor vehicle in interstate commerce knowing the vehicle was stolen, in violation of Section 2312, Title 18, U.S.C.A.?

Can the Grand Jury, the Prosecutor, the District Court, the Circuit Court of Appeals expand the Statutory provisions by adding or reading into said Statute an intent not expressly stated by Congress?

STATUTES INVOLVED

18 U.S.C.A. 2312

Transportation of Stolen Vehicles

"Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both". (June 25, 1948, C. 645, 62 Stat. 806)

JURISDICTION

The date of the judgment to be reviewed is June 23, 1959. Appellants petition for rehearing was denied September 1, 1959. Jurisdiction to issue the Writ is under the provisions of Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925. (28 U.S.C.A., Sec. 1254) Based on Title 28, U.S.C. 1940 Ed. Sec. 346 and 347 (March 3, 1911, C. 231, Sec. 239, 240, 36 Stat. 1157; Feb. 13, 1925, C. 229, Sec. 1, 43, Stat. 939; Jan. 1, 1928, C. 14, Sec. 1, 45 Stat. 54; June 7, 1934, C. 426, 48 Stat. 926) (from Revisors Note, Title 28 U.S.C.A. Judiciary and Judicial Procedure, Sec. 1254, P. 42)

REASONS FOR ALLOWANCE OF WRIT

(1) It was not proved that petitioner transported any automobile in interstate commerce.

(2) It was not proved that the petitioner had any knowledge that the vehicle allegedly transported was the same vehicle found in Wheeling, Illinois, or that the Petitioner had knowledge of its being stolen.

(3) The indictment charges that he transported and caused to be transported a certain automobile knowing the same to have been stolen, in violation of Section 2312, Title 18, U.S.C.A.

(4) The statute makes a Federal offense only when "whoever transports in interstate commerce a motor vehicle knowing the same to have been stolen".

(5) Nowhere in the statute does it contemplate that a person can "cause" the transportation of a motor vehicle by remote control.

(6) The evidence of the government conclusively shows that the petitioner never drove, handled or brought into Illinois from Ohio any motor vehicle let alone the one claimed to have been stolen.

District Court found the defendant guilty and imposed a general sentence of one year and one day.

OPINION BELOW

The opinion of the Circuit Court of Appeals for the Seventh District appears at pages 11-15.

Petition for Rehearing was denied September 1, 1959.

Stay of Mandate was allowed on September 4, 1959, to and including October 2, 1959.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

AUTHORITIES

U. S. v. Acme Can Co., 299 U.S. 207-210.

82 C.J.S. 583.

B. of Ry. S.C.F.H. Expr. St. Emp. v. Norfolk Ry. Co., 143 F. 2nd 1015.

U. S. v. Kordel, 335 U.S. 345.

Hill v. Montgomery, 352 Mo. 147, 176 S.W. 2805.

Huffman v. United States, 259 Fed. 35.

LaPage v. United States, 146 Fed. 2d 536.

Prettyman v. United States, 180 Fed. 30.

Shea v. United States, 251 Fed. 440.

United States v. DeAngelo, 138 Fed. 2d 466.

ARGUMENT.

The Circuit Court of Appeals in this case indulges in some far reaching conclusions.

Aside from the fact that the evidence does not support the judgment based upon the language of the indictment which we shall discuss later. We must of necessity contest the conclusions reached by the Court to sustain the conviction which leads us to a reading of the Statute (Sec. 2312, U.S.C.A.) and then try to square the provisions of the Statute with the charge in the indictment and the proof offered by the Government in support thereof.

First, can the Court add language to the Statute, or, modify or amend the Statute to fit the crime? We contend that to allow the Court such latitude would usurp the plain intent of Congress.

It would also lead to a great deal of confusion. For if this decision were to stand every Court of Appeals would indulge in further fantastic expansion of the Statutory crime. It is obvious that in this case, the Appeals Court could not without modifying and adding to the language of the Statute sustain the judgment below.

We can imagine that the Appeals Court, if allowed to add language to the Statute, could conceivably also expand the language to include not only one crime but several crimes by merely substituting its language for that of the Statute.

The District Court should have at the close of the Government's case entered a not guilty verdict. The variance between the proof and the charge in the indictment is so obvious as not to need any supporting authority.

On Page Two of the Appeals Court Opinion, the said Court makes a statement that should reverse the conviction. In Paragraph Two, the statement is made that "The Government does not contend that Leggett actually transported the automobile, *i. e.* drove it himself from Xenia, Ohio to Chicago, Illinois. . . ." Thus if that is the undisputed contention of the Government, why did it;

Charge "transporting and cause to be transported. . . ." this is not in the language of the Statute. The Appeals Court without any precedence, could not expand the language of the Statute in order to sustain the conviction. Neither Count I nor Count II are good as each is not only not in the language of the Statute but is not supported by the evidence.

United States v. *Cephas*, 7 Cir. 1959, 263 F. 2nd 518, 519 cited by the Appeals Court is not in point. That was a narcotics case and the particular Statute has the word "*cause*" inserted in its language.

United States v. *Kenofskey*, 1917, 243, U.S. 440, 443, also cited in the Opinion is not in point: This case involves violation of the postal laws. There too, the word "cause" is inserted in the language of the particular Statute.

It is a fundamental rule of criminal law that a criminal Statute must be strictly construed, in favor of the accused and may not be extended to cases not covered by the words used. (*United States of America* v. *Acme Can Company*, 299 U.S. 207-210)

Where the language of the Statute is plain and unambiguous it must be given effect according to its plain and obvious meaning. (82 C.J.S. 583)

Thus in applying a statute it is necessary to ascertain the meaning of the words and phrases used by the Congress, and the words should be given the meaning intended by the

law makers. (*Brotherhood of Railway and Steamship Clerks, Freight Handlers, and Express and Station Employees* v. *Norfolk Southern Railway Co.*, 143 F. 2d 1015)

Dictionary definitions are not controlling and are unnecessary where the congressional intent may be readily gathered from a reading of the Statute. (*U. S.* v. *Kordel*, 335 U.S. 345)

Thus, only those transactions within the terms of the Statute are clearly within both the spirit and the letter of the Statute, and, if there is a fair doubt that doubt should be resolved in favor of the accused. Nor can the Courts indulge in extending or reading into the Statute a meaning not intended by Congress.

CONCLUSION.

WHEREFORE, petitioner prays that this Court allow this petition for Certiorari and grant the Writ of Certiorari to the Circuit Court of Appeals, Seventh District.

Respectfully submitted,

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APPENDIX "A"

In the

United States Court of Appeals

For the Seventh Circuit

SEPTEMBER TERM 1958 — APRIL SESSION 1959

No. 12581
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
CHARLES E. LEGGETT,
Defendant-Appellant.

Appeal from the United State District Court for the Northern District of Illinois, Eastern Division.

June 23, 1959.

Before SCHNACKENBERG, PARKINSON and CASTLE, Circuit Judges.

PARKINSON, Circuit Judge. Defendant-appellant Charles E. Leggett, pleading not guilty, was tried to the court on Counts I and II of a three-count indictment. Counts I and II charged Leggett with having unlawfully transported and caused to be transported a "1957 Cadillac Convertible Automobile, Motor Number 5762-026731," from Xenia, Ohio to Chicago, Illinois, on or about December 26, 1957 and January 20, 1958, respectively, knowing it to have been stolen, in violation of 18 U.S.C.A. §2312. Count III, dismissed on motion of the Government, charged a violation of 18 U.S.C.A. §2313.

The District Court found Leggett guilty on both counts and he was given a general sentence of a year and a day. This appeal followed.

Although Leggett states the contested issue to be:

> "Whether the evidence introduced by the Government when viewed in a light most favorable to the government was sufficient to prove the defendant guilty beyond all reasonable doubt, of the crime charged.",

there is no question that, on December 25, 1957, he knew that the automobile named in the indictment was a stolen automobile. Thus his claim for reversal is predicated solely upon his contention that the "(e)vidence fails to prove [he] transported or caused to be transported the automobile named in the indictment", and also, "fails to prove that the automobile named in the indictment was the one which was transported from Xenia, Ohio to Chicago, Illinois."

The Government does not contend that Leggett actually transported the automobile, *i.e.*, drive it himself from Xenia, Ohio to Chicago, Illinois. Hence the core question is simply whether Leggett caused the automobile named in the indictment to be transported from Xenia, Ohio to Chicago, Illinois on the date charged in either Count I or Count II. Both counts being good and the sentence a general one, wherein the penalty imposed did not exceed that prescribed for either count, the conviction will be upheld if the evidence sufficiently sustains the conviction on either count. *United States* v. *Cephas*, 7 Cir., 1959, 263 F. 2d 518, 519.

The undisputed evidence is that, on June 29, 1957, Leggett rented the automobile, named in the indictment and titled in the State of Florida, from a car rental agency in Denver, Colorado; that on November 6, 1957, Leggett forged the name of a fictitious owner of a New York State certificate of title to the subject automobile, with the motor number changed, and thereby transferred the counterfeit

certificate to Anderson Motor Company, Xenia, Ohio; and that on December 16, 1957, Leggett reported the automobile stolen.

The evidence is also uncontradicted that the automobile in the photographs, Government's Exhibits 1, 2, and 3, is the automobile named in the indictment; that Glenn Roger Finley, Service Manager of Anderson Motor Company, first saw that automobile in Anderson's garage in Xenia, Ohio in August, 1957; that he drove it to Chicago, Illinois on August 15, 1957 and delivered it to Leggett there; that the next time he saw that automobile was again in Anderson's garage the early part of December, 1957; that Donald Eugene Wright came to Anderson's garage in Xenia, Ohio on December 26, 1957 and drove the car to Chicago, Illinois; that he, Finley, knew it was the same car as named in the indictment because there was a crack in the windshield and the ash tray was broken and was laid open just as shown by Government's Exhibit 3.

The trial judge saw and observed the witnesses and heard their testimony. If he believed the witness Finley, the evidence in the record proves beyond a reasonable doubt that Wright transported the automobile named in the indictment from Xenia, Ohio to Chicago, Illinois on December 26, 1957 and Leggett knew it was then a stolen car. Thus the only question remaining open is whether Leggett did or did not cause Wright to so transport the automobile.

Wright testified that in 1957 he was an automobile salesman in Illinois and became acquainted with Leggett in April or May of that year; that in December, 1957, he had a prospective customer for a 1957 Cadillac convertible; that he contacted Leggett and asked him if he knew where he could get one; that Leggett said he would let him know; that the next day or two he called Leggett on another mat-

ter and Leggett told him "that they had a convertible at the Cadillac agency in Ohio"; that Wright called Leggett on Christmas Day and asked Leggett if he could get the car to Chicago and Leggett said "he would try to get somebody to bring the car to [Wright];" that later in the day, when Wright checked back with Leggett, Leggett said he couldn't get anyone to bring the car over and for Wright to "go ahead and get it"; that Wright went to Xenia, Ohio, arrived at Anderson's garage about 8:00 o'clock in the morning of December 26, 1957, picked up the stolen automobile and drove it to Chicago, Illinois, arriving shortly after noon; that he was unable to make the sale to his prospective purchaser; that the following day he drove the car to O'Hare Field in Chicago, as directed by Leggett, gave the keys to Leggett, who met him there and then drove him to his place of employment in Evanston. That is the same car Finley testified that he picked up at O'Hare Field on December 30 or 31, 1957, after getting the keys from Leggett plus $20 "to get back to Xenia, Ohio," and the same car as named in the indictment, as identified by Finley in his testimony.

Leggett recognizes, as indeed he must under 18 U.S.C.A. §2, that proof beyond a reasonable doubt that he caused the interstate transportation of the named automobile is all that is required.

Cause means "to bring about; to bring into existence;"[1] It "is a word of very broad import" and "is used in [18 U.S.C.A. §2 (b)] in its well-known sense of bringing about,".[2]

The facts established by the evidence, direct and circumstantial, are that on December 25, 1957, Leggett knew

[1] Webster's New International Dictionary, Second Edition

[2] **United States v. Kenofskey**, 1917, 243 U.S. 440, 443.

the automobile named in the indictment was a stolen automobile; that it was in Anderson's garage in Xenia, Ohio; that Wright, an automobile salesman, had a prospective purchaser for that automobile in Illinois; that a sale by Wright would be beneficial to Leggett; and that to get the stolen automobile from Xenia, Ohio to Chicago, Illinois it had to be transported in interstate commerce in violation of the federal law. Thus when Leggett told Wright, on December 25, 1957, he could "go ahead and get it" and Wright drove that stolen automobile from Xenia, Ohio to Chicago, Illinois the next day, Leggett clearly brought about the unlawful interstate transportation of that stolen automobile and as surely violated 18 U.S.C.A. §2312 as if he himself had driven the car.

Any comment on the other evidence concerning the transportation of the car from Xenia to Chicago on January 20, 1958, its disappearance and ultimate possession by the Chicago Police on January 23, 1958 is unnecessary as the evidence detailed herein is substantial and more than adequately supports the finding of the District Court that Leggett caused the transportation of the automobile named in the indictment from Xenia, Ohio to Chicago, Illinois on December 26, 1957 as charged in Count I of the indictment.

Leggett claims no error in the trial nor in any of the proceedings below. He was fairly tried and the District Court found him to be guilty under the evidence beyond a reasonable doubt. We are convinced that the finding is adequately supported by substantial evidence. Certainly we cannot conclude as a matter of law that reasonable minds, as triers of the fact, would be in agreement that any reasonable hypothesis other than guilt could be drawn from the evidence. *United States* v. *Holsman*, 7 Cir., 1956, 238 F. 2d 141, 142.

Judgment affirmed.

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In the Supreme Court of the United States

October Term, 1959

CHARLES E. LEGGETT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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18 U.S.C. 2312 2, 4

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 434

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v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (App. 92-96)[1]. is reported at 269 F. 2d 35.

JURISDICTION

The judgment of the court of appeals was entered on June 23, 1959 (App. 97). A petition for rehearing was denied on September 1, 1959 (App. 98). The petition for a writ of certiorari was filed on

[1] "App." refers to the Appendix filed in the court of appeals.

September 28, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the causing of the interstate transportation of a stolen car is an offense under the laws of the United States.

STATUTES INVOLVED

18 U.S.C. 2(b):

> Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. 2312:

> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Following a waiver of jury trial, petitioner was convicted on two counts charging him with transporting and causing to be transported in interstate commerce on or about December 26, 1957 (count 1), and on or about January 20, 1958 (count 2), a stolen car, with knowledge that it had been stolen (App. 3-4). He was sentenced to a general term of imprisonment of one year and one day (App. 5). On appeal, the judgment of conviction was affirmed (App. 97).

The government adduced at the trial evidence to show the following:

On June 29, 1957, in Denver, Colorado, petitioner rented from a car rental agency a 1957 Cadillac convertible, Motor No. 5762026731 (App. 4-15). In December of that year, he reported that the car had been stolen (App. 32).

In November 1957, petitioner, using the name Turnbull, registered a 1957 Cadillac convertible under Motor Number 5762041009 and under that number transferred it to the Anderson Motor Company of Xenia, Ohio (App. 55, 56-71), with whom petitioner had been working in buying and selling automobiles (App. 18, 22).

In December 1957, Wright, an automobile salesman in Chicago, asked petitioner if he could help him find a Cadillac convertible for a prospective buyer (App. 40). Petitioner told Wright to get the car at Xenia, Ohio, and called Mr. Anderson to tell him that Wright was coming down to get it (App. 40-41). On December 26, 1957, Wright drove the car from Ohio to Chicago (App. 40-41). When Wright's prospective sale did not go through, he called petitioner who told him to leave the car at O'Hare Field in Chicago. Wright gave the keys to petitioner (App. 42).

Within a few days, G. R. Finley, the service manager of the Anderson Motor Company, picked up the car at the Field and returned it to the Anderson garage (App. 22), having received the keys for the car from petitioner (App. 23).

In January 1958, Finley drove the car to Chicago for the purpose of selling it to another prospective customer of Mr. Wright. When they went down to the parking place to see the car it was gone. Its loss was immediately reported to the police (App. 23-24). A 1957 Cadillac convertible found by the police later that month in Wheeling, Illinois, had a motor number of 5762041009 but its frame number was 5762026731. Cadillacs have the same number on both frame and motor (App. 7-10).

ARGUMENT

Petitioner contends that 18 U.S.C. 2312 does not include the "causing" of the interstate transportation of a stolen automobile since the statute covers "whoever transports in interstate * * * commerce" such a vehicle and does not use the word "cause." However, 18 U.S.C. 2(b) provides that a person who causes a criminal act to be done is liable as a principal. As the reviser's notes to Section 2(b) indicate, this section was added to make it unnecessary to use the words of causation in the substantive criminal statutes. 18 U.S.C. 2(b) was intended to apply to "anyone who causes the doing of an act which if done by him directly would render him guilty of an offense against the United States." See also *United States* v. *Sheridan*, 329 U.S. 379, 391.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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OCTOBER 1959

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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1959

No. 434

CHARLES E. LEGGETT,

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THE UNITED STATES OF AMERICA,

Respondent.

REPLY TO THE GOVERNMENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

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REPLY TO THE GOVERNMENT'S BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

ARGUMENT.

To the Honorable Chief Justice and Associate Justices of the United States:

We find it necessary to reply to the Government's opposition brief to point out to your honors:—

(1) That the *Sheridan* case is not in point. The Statute considered in the *Sheridan* case expressly provided "that the mailing or causing to be delivered by mail shall be "; note that the statute expressly uses the word causing.

(2) Section 2(b), 18 U.S.C. is adjective law; it defines who principals may be; but where the statute defining an offense is substantial law and is all inclusive; Section 2(b) does not apply, notwithstanding the revisor's note.

Respectfully Submitted,

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Petition for Rehearing

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On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

Petition for Rehearing

May It Please The Court:

Our petition for certiorari was filed and certiorari was denied on November 23, 1959.

In our petition for certiorari we sought to apprise the Court that the defendant was convicted on two counts of a three count indictment charging that on two dates, December 26, 1957, and on January 20, 1958, respectively, "wilfully, unlawfully and feloniously transported and *caused* to be transported in interstate commerce a motor vehicle knowing it to have been stolen."

The opinion of the Circuit Court of Appeals sustaining the conviction was published in full on pages 11-15 of the petition for certiorari.

In the petition for certiorari, the questions presented were (1) whether or not a conviction could be sustained on an indictment which charged defendant with "transporting or *causing* to be transported", in violation of 18 U.S.C.A. Section 2312, and (2) can the Statutory provisions be expanded to include a crime not contemplated by Section 2312.

We most earnestly and respectfully urge upon this Honorable Court that the argument in support of certiorari be reconsidered. Had the Congress intended that "causing" an automobile transported to be a crime, it would have so stated in Section 2312. In support of our argument it is submitted that Section 215 of the Criminal Code provides:

> "Whoever, having devised. . . . any scheme or artifice to defraud. . . . shall, for the purpose of executing such scheme, or artifice or attempting so to do, place, or *cause* to be placed, etc." (emphasis ours.)

To the same effect is the Narcotics Statutes.

The Congress having omitted the word "caused" from Section 2312, it is a reasonable assumption that Congress intended only that "the transporting" of an automobile be a crime.

It is fundamental that a criminal statute must be strictly construed in favor of the accused and may not be extended to cases not covered by the words used. (*United States of America* v. *Acme Can Company*, 299 U.S. 207-210).

Where the language of the Statute is plain and unambiguous it must be given effect according to its plain and obvious meaning. (82 C.J.S. 583)

Thus, only those transactions within the terms of the Statute are clearly within both the spirit and the letter of the Statute, and, if there is a fair doubt, that doubt should be resolved in favor of the accused.

The Government in its opposition brief, for the first time, cites and brings into the case 18 U.S.C.A. 2 (b). The indictment does not charge violation of the Section and in consequence, the defendant had no opportunity to defend against it. We submit that the Section does not have any application to the case at bar.

We respectfully submit the certiorari should be granted.

Respectfully submitted,

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